

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MELANIE RAEL,

Plaintiff,

v.

Civ.No. 97-01096

LEO MARQUEZ and SANTA FE
COUNTY SHERIFF BENJIE MONTANO,
individually and in their official capacities,
and THE COUNTY OF SANTA FE, a
political subdivision of the State of New Mexico,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court upon plaintiff's Motion to Compel Defendant Leo Marquez to Respond to Interrogatories and Production of Documents, filed May 1, 1998 [36-1]. Plaintiff seeks full responses to Interrogatories Nos. 3, 7, 11 and 18.

Plaintiff argues that defendant's objections are without merit and should be waived because defendant's answers were unverified for about twelve days after March 1, 1998, the date on which the answers were actually due. Yet plaintiff also states that the answers themselves (although unverified) were delivered to plaintiff on February 17, 1998, which is about two weeks before they were due. Mot., ¶ 3. Defendant concedes that the verification was late, but that the objections were signed by counsel as required under Fed.R.Civ.P. 33(b). I find plaintiff's grounds for waiver of defendant's objections to be without merit.

On the other hand, there will be no opportunity to review plaintiff's motion on its own merits. Defendant contends that plaintiff has waived her right to proceed with the motion to compel because it was not filed within the required twenty-day period following service of objections.

Plaintiff's motion to compel would have been due on March 9, 1998, but was served on defendant on March 30, 1998, which is indeed outside the period of time allowed for plaintiff to file a motion to compel. I find no justification for plaintiff's untimeliness.

On February 19, 1998, plaintiff sent defense counsel a letter asserting that defendant's objections were not valid or reasonable, and asked for cooperation in providing full responses. The letter also stated that plaintiff would file a motion to compel if defendant did not respond within fifteen days, which was March 5, 1998, several days before the motion to compel would have been due under the local rules. See D.N.M.LR-Civ. 26.6. Defendant did not respond until March 12, 1998 in a letter which essentially reiterated objections to Interrogatories Nos. 3, 7, 11 and 18.

Plaintiff did not serve the motion to compel until March 30, 1998, which was three weeks after it was due, and more than two weeks after defendant finally responded. Plaintiff has not sought an extension of time within which to file the motion, nor filed a reply.

WHEREFORE,

IT IS ORDERED that plaintiff's Motion to Compel Defendant Leo Marquez to Respond to Interrogatories and Production of Documents [36-1] be, and hereby is, denied;

IT IS FURTHER ORDERED that each party shall bear its own costs and fees incurred in filing this motion.


UNITED STATES MAGISTRATE JUDGE